IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.896 OF 2005
IN
NOTICE OF MOTION NO.3036 OF 2004
IN
TEST.PETITION NO.698 OF 2004

Dinesh Ramchandra Sawant
& anr. .. Appellants

v/s.

Shivaji Ramchandra Sawant .. Respondent

Mr.Rajiv Narula with Mr.Dasgupta i/by M/s.Jh.Narula & Associates for the appellants.

Mr.Suresh Gole i/by M/s.Gole & Co. for the respondent.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 19th November, 2005

P.C.

Heard Mr.Rajiv Narula, learned counsel for the appellants.

2. In the arbitration proceedings between the parties which were referred to S.R.Shah (Arbitrator), interalia one of the issues was whether the subject shop was purchased by the deceased Ramchandra Sawant in the name of one of his sons Dinesh and that Ramchandra was true owner of the said shop. The Arbitrator in his award recorded the finding that the subject shop was purchased by Ramchandra Sawant. Ramchandra (deceased) has executed the Will and in that Will, the subject shop also finds place.

3. The learned motion Judge has held that the

subject shop appears to be part of the estate of the deceased and, therefore, deserves to be protected and preserved during the pendency of testamentary proceedings. In the backdrop of the award, the said finding cannot be said to suffer from any infirmity.

4. However, we clarify that the restraint order shall not preclude the appellant in using the subject shop in the manner he likes and for running the business therein, if he intends to enter into in the agreement for conducting the business with the third party, he may do so without creating any right, title or interest in such third party.

5. With the aforesaid clarification, appeal is dismissed in limine.

(R.M.LODHA, J.)

(D.G. KARNIK, J.)